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9 **BEFORE THE**
10 **REGISTRAR OF CONTRACTORS**
11 **CONTRACTORS' STATE LICENSE BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. N2017-484

15 **RODNEY PAUL SIBLEY**
16 **DBA SERVPRO OF IRVINE**
2691 Richter Ave., Suite 117
Irvine, CA 92606

A C C U S A T I O N

17 **Contractor's License No. 835414, B**

18 Respondent.

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21 Complainant alleges:

22 **PARTIES**

23 1. Wood Robinson (Complainant) brings this Accusation solely in his official capacity
24 as the Enforcement Supervisor I of the Contractors' State License Board (Board), Department of
25 Consumer Affairs.

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2. On or about April 5, 2004, the Registrar of Contractors (Registrar) issued Contractor's License Number 835414, Classification B (general building contractor), to Rodney Paul Sibley, dba Servpro of Irvine (Respondent). The Contractor's License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed. The following is the suspension history:

Suspension Date:	Violation:	Status:
05/09/2007	Business and Professions Code section 7125.2 (Workers' Compensation)	Reinstated 10/13/2007
03/22/2008	Code of Civil Procedure section 996.340 (Contractor's Bond)	Reinstated 04/11/2008
02/13/2014	Business and Professions Code section 7071.17 (Judgment #30-2013-00665447)	Reinstated 02/24/2014
11/15/2016	Code of Civil Procedure section 996.340 (Contractor's Bond)	Suspension remains in effect.
11/27/2016	Business and Professions Code section 7071.11 (Bond Payment of Claim #9A350151)	996.340 Suspension lifted 12/09/2016
12/13/2017	Code of Civil Procedure section 996.340 (Contractor's Bond)	Expired under suspensions on 04/30/2018.

JURISDICTION

3. This Accusation is brought before the Registrar for the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118(b) of the Code states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

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1 5. Section 7090 of the Code provides, in pertinent part, that the Registrar may suspend
2 or revoke any license or registration if the licensee or registrant is guilty of or commits any one or
3 more of the acts or omissions constituting cause for disciplinary action.

4 6. Section 7095 of the Code provides, in pertinent part, that the Registrar in making his
5 order may:

6 (a) Provide for the immediate complete suspension by the licensee of all operations as a
7 contractor during the period fixed by the decision.

8 (b) Permit the licensee to complete any or all contracts shown by competent evidence
9 taken at the hearing to be then uncompleted.

10 (c) Impose upon the licensee compliance with such specific conditions as may be just in
11 connection with its operations as a contractor disclosed at the hearing, and may further provide
12 that until such conditions are complied with, no application for restoration of the suspended or
13 revoked licensee shall be accepted by the Registrar.

14 7. Section 7097 of the Code states:

15 Notwithstanding the provisions of Sections 7121 and 7122, when any
16 licensee has been suspended by a decision of the registrar pursuant to an
17 accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or
18 7090.1, any additional license issued under this chapter [the Contractors' State
License Law] in the name of the licensee or for which the licensee furnished
qualifying experience and appearance under the provisions of Section 7068,
may be suspended by the registrar without further notice.

19 8. Section 7098 of the Code states:

20 Notwithstanding the provisions of Sections 7121 and 7122, when any
21 license has been revoked under the provisions of this chapter [the Contractors'
22 State License Law], any additional license issued under this chapter in the name
of the licensee or for which the licensee furnished qualifying experience and
23 appearance under the provisions of Section 7068, may be revoked by the
registrar without further notice.

24 9. Section 7106.5 of the Code states, in pertinent part, that the expiration, cancellation,
25 forfeiture, or suspension of a license by operation of law, or by order or decision of the Registrar
26 or a court of law, or the voluntary surrender of the license shall not deprive the Registrar of
27 jurisdiction to proceed with disciplinary action.

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1 10. Section 7076.5 of the Code provides, in pertinent part, that the inactive status of a
2 license shall not bar any disciplinary action for violating provisions of the Contractors' State
3 License Law (Bus. & Prof. Code, ' 7000, et seq.).

4 11. Section 7121 of the Code states:

5 Any person who has been denied a license for a reason other than failure
6 to document sufficient satisfactory experience for a supplemental classification
7 for an existing license, or who has had his or her license revoked, or whose
8 license is under suspension, or who has failed to renew his or her license while
9 it was under suspension, or who has been a member, officer, director, or
10 associate of any partnership, corporation, firm, or association whose application
11 for a license has been denied for a reason other than failure to document
12 sufficient satisfactory experience for a supplemental classification for an
13 existing license, or whose license has been revoked, or whose license is under
14 suspension, or who has failed to renew a license while it was under suspension,
15 and while acting as a member, officer, director, or associate had knowledge of
16 or participated in any of the prohibited acts for which the license was denied,
17 suspended, or revoked, shall be prohibited from serving as an officer, director,
18 associate, partner, or qualifying individual of a licensee, and the employment,
19 election, or association of this type of person by a licensee in any capacity other
20 than as a non-supervising bona fide employee shall constitute grounds for
21 disciplinary action.

22 12. Section 7121.5 of the Code states:

23 Any person who was the qualifying individual on a revoked license,
24 or of a license under suspension, or of a license that was not renewed while
25 it was under suspension, shall be prohibited from serving as an officer,
26 director, associate, partner, or qualifying individual of a licensee, whether
27 or not the individual had knowledge of or participated in the prohibited acts
28 or omissions for which the license was revoked, or suspended, and the
employment, election, or association of such person by a licensee shall
constitute grounds for disciplinary action.

STATUTORY PROVISIONS

13. Section 7109, subdivision (a), of the Code states:

A willful departure in any material respect from accepted trade standards
for good and workmanlike construction constitutes a cause for disciplinary
action, unless the departure was in accordance with plans and specifications
prepared by or under the direct supervision of an architect.

14. Section 7113 of the Code states:

Failure in a material respect on the part of a licensee to complete any
construction project or operation for the price stated in the contract for such
construction project or operation or in any modification of such contract
constitutes a cause for disciplinary action.

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15. Section 7154 of the Code states:

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(d) A home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson as provided in this article, is subject to disciplinary action by the registrar.

16. Section 7159 of the Code states, in pertinent part:

(a)(5) Failure by the licensee, his or her agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices, and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

....

(c) In addition to the specific requirements listed under this section, every home improvement contract and any person subject to licensure under this chapter or his or her agent or salesperson shall comply with all of the following:

....

(7) The heading: "Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed," followed by a description of the project and a description of the significant materials to be used and equipment to be installed.

....

(d) A home improvement contract and any changes to the contract shall be in writing and signed by the parties to the contract prior to the commencement of work covered by the contract or an applicable change order and, except as provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of the following:

....

(10) The contract shall address the commencement of work to be performed in substantially the following form:

....

(C) The approximate date on which work will be commenced.

....

(11) The estimated completion date of the work shall be referenced in the contract in substantially the following form:

....

1 (B) The approximate date of completion.

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3 (e) Except as provided in paragraph (8) of subdivision (a) of Section
4 7159.5, all of the following notices shall be provided to the owner as part of the
5 contract form as specified or, if otherwise authorized under this subdivision,
6 may be provided as an attachment to the contract:

7

8 (4) A notice with the heading "Mechanics Lien Warning" written as
9 follows:

10 "MECHANICS LIEN WARNING:

11 Anyone who helps improve your property, but who is not paid, may
12 record what is called a mechanics lien on your property. A mechanics lien is a
13 claim, like a mortgage or home equity loan, made against your property and
14 recorded with the county recorder.

15 Even if you pay your contractor in full, unpaid subcontractors, suppliers,
16 and laborers who helped to improve your property may record mechanics liens
17 and sue you in court to foreclose the lien. If a court finds the lien is valid, you
18 could be forced to pay twice or have a court officer sell your home to pay the
19 lien. Liens can also affect your credit.

20 To preserve their right to record a lien, each subcontractor and material
21 supplier must provide you with a document called a 'Preliminary Notice.' This
22 notice is not a lien. The purpose of the notice is to let you know that the person
23 who sends you the notice has the right to record a lien on your property if he or
24 she is not paid.

25 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after
26 the subcontractor starts work or the supplier provides material. This can be a
27 big problem if you pay your contractor before you have received the
28 Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from
laborers who work on your project. The law assumes that you already know
they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from
liens by getting a list from your contractor of all the subcontractors and material
suppliers that work on your project. Find out from your contractor when these
subcontractors started work and when these suppliers delivered goods or
materials. Then wait 20 days, paying attention to the Preliminary Notices you
receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with
a joint check. When your contractor tells you it is time to pay for the work of a
subcontractor or supplier who has provided you with a Preliminary Notice,
write a joint check payable to both the contractor and the subcontractor or
material supplier.

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1 For other ways to prevent liens, visit CSLB's Internet Web site at
2 www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

3 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN
4 PLACED ON YOUR HOME. This can mean that you may have to pay twice,
5 or face the forced sale of your home to pay what you owe."

6
7 17. Section 7159.5 of the Code states:

8 This section applies to all home improvement contracts, as defined in
9 Section 7151.2, between an owner or tenant and a contractor, whether a general
10 contractor or a specialty contractor, that is licensed or subject to be licensed
11 pursuant to this chapter with regard to the transaction.

12 (a) Failure by the licensee or a person subject to be licensed under this
13 chapter, or by his or her agent or salesperson, to comply with the following
14 provisions is cause for discipline:

15
16 (5) Except for a downpayment, the contractor may neither request nor
17 accept payment that exceeds the value of the work performed or materials delivered.
18
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20 COST RECOVERY/RESTITUTION

21 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

27 19. Section 11519, subdivision (d), of the Government Code states, in pertinent part, that
28 the Registrar may require restitution of damages suffered as a condition of probation in the event
probation is ordered.

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1 **N.M. PROJECT**

2 20. On or about January 18, 2016, homeowner N.M. entered into a written home
3 improvement contract with Rodney Paul Sibley, dba Servpro of Irvine (Respondent) to remove
4 the existing laminate flooring and install ceramic tile flooring throughout his home located in
5 North Tustin, California, for the contract price of \$23,800. On the same date, N.M. paid
6 Respondent a \$1,000 down payment via a credit card. The contract was sold by Lillian Sibley (L.
7 Sibley), an unregistered salesperson. The contract provided to N.M. did not contain the CSLB
8 required language and notices.

9 21. Prior to the contract date, N.M.'s laminate floors suffered water damage due to a slab
10 leak. The repair work was covered by N.M.'s insurance company. Also, prior to the contract
11 date, N.M. decided to upgrade the flooring with ceramic tile and N.M. purchased the ceramic tile
12 for \$6,372.03.

13 22. On January 20, 2016, Respondent requested and received from N.M. a progress
14 payment in the amount of \$13,680, an amount in excess of the work performed or materials
15 delivered.¹ Work commenced on January 25, 2016. On January 28, 2016, three days after work
16 commenced, Respondent requested and received a second progress payment of \$5,472, for a total
17 of \$19,152, with only \$4,648 remaining to be paid on the contract.

18 23. When the damaged laminate flooring was removed by Respondent, N.M. noticed that
19 the concrete flooring was not level throughout the house and brought this to Respondent's
20 attention. Respondent told N.M. that there was nothing Respondent could do about the unlevelled
21 concrete flooring and proceeded to install the ceramic tile. When the floor was approximately
22 fifty percent completed, N.M. again expressed his dissatisfaction with the flooring not being level
23 and complained of excessive lippage. Respondent, however, continued installing the ceramic
24 flooring without leveling the concrete flooring.

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28 ¹ The homeowner purchased the ceramic flooring.

1 24. Work was last performed on March 25, 2016, when Respondent informed N.M. the
2 project was completed. Respondent had N.M. sign a "Certificate of Satisfaction: Job
3 Completion," which N.M. did, and Respondent was paid the balance on the contract, for a total of
4 \$23,800.

5 25. Between December of 2017 and May of 2018, the Board's enforcement
6 representative (ER) made several attempts to reach Respondent by telephone, to no avail.
7 On May 8, 2018, the ER made one final attempt to reach Respondent before concluding the
8 investigation, and the ER was able to reach Respondent. Respondent claimed to the ER that
9 homeowner N.M. had rejected the leveling of the concrete flooring. On May 14, 2018,
10 Respondent submitted to the ER a copy of the contract with N.M., which contained a paragraph
11 that was missing from the contract that the homeowner provided the ER. The missing paragraph
12 reads:

13 It is recommended to repair the concrete foundation prior to the installation of
14 the tile floor. Declining the recommended repair to the concrete foundation prior to
15 the installation of the tile floor will release Servpro Irvine, agents, or its franchisor,
16 Servpro Industries, Inc., be responsible [sic] for any losses or damages, whether
17 direct, indirect, special, nominal, incidental, punitive or any consequential, including
18 personal injury, or for any other penalties, regardless of the legal or equitable theory
19 asserted, or for claims by a third party, resulting directly or indirectly our of, [sic] or
20 otherwise arising in connection with, any actions or inaction of business relating to
21 restoration services rendered at the property. Including any pre-existing condition of
22 the property. The maximum aggregate liability to you shall not exceed the amount
23 paid by you for services. It is expressly agreed that customers' remedy expressed
24 herein is customer's exclusive remedy. The limitations set forth herein shall apply
25 even if any other remedies fail of their essential purpose.

26 26. On or about February 6, 2018, a Board industry expert (IE) inspected the N.M.
27 project and opined that Respondent's work departed from accepted trade standards and that it
28 would cost N.M. \$51,036.21 to correct and complete the project. The financial injury is
\$51,036.21.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Departure From Accepted Trade Standards)**

3 27. Respondent has subjected his contractor's license to disciplinary action under Code
4 section 7109(a), in that on the N.M. project, Respondent willfully departed from accepted trade
5 standards for good and workmanlike construction in the following respects:

- 6 a. Respondent failed to install the ceramic tile flooring level.
7 b. Respondent failed to properly adhere the ceramic tiles.
8 c. Respondent installed the ceramic tiles with excessive lippage.
9 d. Respondent failed to properly install grouting materials between tile joints.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Complete Project for the Price Stated in the Contract)**

12 28. Respondent has subjected his contractor's license to disciplinary action under Code
13 section 7113, in that Respondent failed to complete the N.M. project for the contract price, and
14 N.M. was or will be required to pay an additional \$51,036.21, as is more fully detailed at
15 paragraphs 20 through 26, which are incorporated here by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Employed Unregistered Salesperson)**

18 29. Respondent has subjected his contractor's license to disciplinary action under Code
19 section 7154, in that Respondent employed unregistered salesperson Lillian Sibley to sell the
20 N.M. contract, as is more fully detailed at paragraphs 20 through 26, which are incorporated here
21 by reference.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Home Improvement Contract Provisions)**

24 30. Respondent has subjected his contractor's license to disciplinary action under Code
25 section 7159, in that on the N.M. project, Respondent failed to comply with provisions of that
26 section, as follows:

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1 a. Subdivision (d)(7): Respondent failed to include in the contract a description of the
2 project or materials to be used and equipment to be installed.

3 b. Subdivision (d)(10)(C): Respondent failed to include the approximate start date.

4 c. Subdivision (d)(11)(B): Respondent failed to include the approximate completion
5 date.

6 d. Subdivision (e)(4): Respondent failed to include a notice regarding mechanics lien.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Home Improvement Contract Requirements)**

9 31. Respondent has subjected his contractor's license to disciplinary action under Code
10 section 7159.5, in that on the N.M. project, Respondent failed to comply with the provisions of
11 that Code, as follows:

12 a. Subdivision (a)(5): Respondent requested and received progress payments in excess
13 of the work performed or materials delivered, as is more fully detailed at paragraphs 20 through
14 26, which are incorporated here by reference.

15 **OTHER MATTERS**

16 32. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 835414
17 issued to Rodney Paul Sibley, dba Servpro of Irvine, is suspended or revoked by a decision of the
18 Registrar, the Registrar may suspend or revoke, without notice, any other license issued in the
19 name of Rodney Paul Sibley or for which Rodney Paul Sibley furnished the qualifying experience
20 and appearance.

21 33. Pursuant to Code section 7121, if discipline is imposed on Contractor's License
22 Number 835414 issued to Rodney Paul Sibley, dba Servpro of Irvine, then Rodney Paul Sibley
23 shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual
24 of any licensee during the time the discipline is imposed, and any licensee which employs, elects,
25 or associates Rodney Paul Sibley in any capacity other than as a non-supervising bona fide
26 employee shall be subject to disciplinary action.

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7. Ordering Rodney Paul Sibley, dba Servpro of Irvine, to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

8. Taking such other and further action as deemed necessary and proper.

DATED: 3/14/19
FILED
MAR 14 2019
CSLB DSS

Wood Robinson
WOOD ROBINSON
Enforcement Supervisor I
Contractors' State License Board
Department of Consumer Affairs
State of California
Complainant

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